

Montana Criminal Code

EXHIBIT 8
DATE 1/29/13
HB 232

45-5-102. Deliberate homicide. (1) A person commits the offense of deliberate homicide if:

(a) the person purposely or knowingly causes the death of another human being;

45-5-104. Negligent homicide. (1) A person commits the offense of negligent homicide if the person negligently causes the death of another human being.

Section 45-2-101.

(34) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense **when the person is aware of the person's own conduct or that the circumstance exists.** A person acts knowingly with respect to the result of conduct described by a statute defining an offense **when the person is aware that it is highly probable that the result will be caused by the person's conduct.**

When knowledge of the existence of a particular fact is an element of an offense, **knowledge is established if a person is aware of a high probability of its existence.** Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(64) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's **conscious object to engage in that conduct** or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(42) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the **person consciously disregards a risk that the result will occur** or that the circumstance exists or when the person **disregards a risk of which the person should be aware that the result will occur or that the circumstance exists.** The **risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.** "Gross deviation" means **a deviation that is considerably greater than lack of ordinary care.** Relevant terms, such as "negligent" and "with negligence", have the same meaning.

Sherner (2000 MT 50) held in 2000:

¶37. We conclude that the appropriate definition of "malice" for use in § 39-71-413, MCA, is that found in § 27-1-221(2), MCA; [a] defendant is guilty of actual malice if the defendant has **knowledge of facts or intentionally disregards facts that create a high probability of injury** to the plaintiff **and:** (a) **deliberately proceeds to act in conscious or intentional disregard of the high probability of injury** to the plaintiff; or (b) **deliberately proceeds to act with indifference to the high probability of injury** to the plaintiff.

The 2001 Legislature eliminated the above malice standard, making it easier to meet the burden to convict a murderer in Montana than it is to hold employers accountable and responsible for the injuries and deaths they cause. HB 232 makes it even harder by requiring a burden of proof standard of beyond a reasonable doubt.

HB 232 Exclusive Remedy

The decision was unanimous in *Alexander v. Bozeman Motors*, 2012 MT 301, (Alexander 2) upholding the jury finding that Alexander did not prove an intentional act, and upholding the statute's constitutionality. I do apologize, because Justice Rice did dissent in Alexander 1 (2010 MT 135). Justice Rice wrote at ¶45:

At most, this alleged conduct establishes aggravated negligence in failing to provide a safe working environment, **and although reprehensible, the Legislature has deemed such conduct insufficient to remove this case from the exclusivity provision of the Workers' Compensation Act. See § 39-71-413(3), MCA; Wise, ¶ 12.** Only cases involving intentional and deliberate acts specifically intended to cause the injury to the injured employee are permitted under the exception to exclusivity.

HB 232 protects even more reprehensible conduct. This statute has removed any economic incentive to maintain a safe work place. Prior law did not expose responsible employers to any added risk. This statute, however, allows irresponsible employers to injure and maim workers with impunity!

The statute allows an exception only for intentional and deliberate acts that are specifically and actually intended to cause injury to the specific worker who is injured, and there is actual knowledge that an injury is certain to occur. The statute removes from the law any exception for malicious acts - an employer can know that a workplace creates a high probability of injury to workers, deliberately proceed to act in conscious or intentional disregard of the high probability of injury to workers, and still be protected by the exclusivity rule. The statute removes any responsibility for any omissions, no matter how egregious the omission.

Actions that are highly probable to result in death can be prosecuted as a deliberate homicide, even if there is no intent to actually cause death (criminal standards are on reverse side). But, an employer gets the benefit of exclusivity, simply because he doesn't intend to actually cause that specific employee's death.